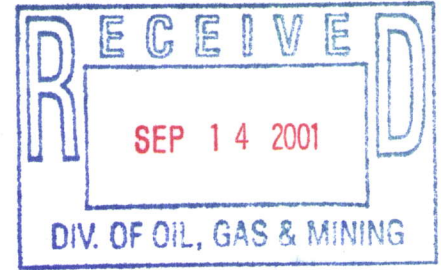


STATE OF UTA
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL



RAYMOND A. HINTZE
Chief Deputy - Civil

KIRK TORGENSEN
Chief Deputy - Criminal

September 13, 2001

Tony J. Rudman, Esq.
Magnesium Corporation of America
238 North 2200 West
Salt Lake City, UT 84116-2921

Re: Division of Oil, Gas & Mining's Evaluation of Knolls Facility Reclamation
Plan and Surety Amount - Knolls Facility, Utah, Permit no. M/045/022

Dear Mr. Rudman:

Thank you for your July 25, 2001 letter to Mary Ann Wright, Wayne Hedberg, and myself regarding the Utah Division of Oil, Gas and Mining's (DOGM or Division) current evaluation of Magcorp's Reclamation Plan and amount of surety for Magnesium Corporation of America's (Magcorp's) Knolls project area.

As a preliminary matter, I would like to clarify two issues presented in your letter. At the top of page two of your letter you state that "[I]t was also Magcorp's understanding that Mr. Seel would provide Magcorp with the legal basis justifying the assertion that the BLM has a unilateral right to increase the scope of the Reclamation Plan based upon 'the changing of the rules over the last 15 years regarding environmental regulations and reclamation expectations'." The only communication I have had with you and Magcorp on this matter is my letter sent to you dated July 19, 2001. That letter contains no such statement or promise. To the extent you or Magcorp expressly or impliedly attribute your quotation to me, I strongly disagree that I ever made that statement.

In the second paragraph of page two of your letter, you assert that the United States Bureau of Land Management (BLM) is taking action against Magcorp. To the extent the BLM is exercising any federal legal authority to require Magcorp to "unilaterally change the entire scope of the reclamation plan" I would encourage Magcorp to contact BLM on those issues. Except to the extent Magcorp has agreed the BLM may have input to this matter, DOGM's authority in this matter is derived from Utah state laws and regulations.

Following Operations:

* * *

- 4) All access and haulage roads **not having approved postmining land use will be reclaimed.**
- 5) Interior dikes will be regraded. Exterior dikes **will be reclaimed in a manner consistent with the approved postmining land determined by the Division and the Bureau of Land Management upon termination of mining activities.**

See "Attachment," Mining and Reclamation Plan Summary, AMAX Magnesium Corporation, Knolls Solar Ponds ACT/045/022, dated June 1, 1987 (**emphasis added**).

Magcorp's Legal and Contractual Obligations

In your letter AMAX Magnesium Magcorp challenges the Division's legal authority both to amend Magcorp's Reclamation Plan, and to revise the amount of the surety, for Magcorp's mining operations. A brief, limited synopsis of each is discussed below.

The Legislature has delegated to the Division the discretion to revise both reclamation plans and the "type and amount" of the surety to comply with the mandate of the Mine Land Reclamation Act. See e.g., 40-8-14. As it has in the past for the Knolls facility, the Division routinely revises mine reclamation plans and surety amounts at mining operations throughout the State to reflect changed conditions, e.g., inflation, credit for reclamation work already performed, increases in the disturbed areas not anticipated at the time the Permit was issued, etc. For these reasons the Division has the legal authority to request revision of Magcorp's Reclamation Plan and increase (or decrease) the amount of Magcorp's reclamation surety to comply with the Act.

However, in this case it is unnecessary for Magcorp and the Division to agree on the Division's legal authority, because in 1987 Magcorp *expressly* agreed that the final Reclamation Plan for many aspects of its mining operation would be deferred until a later time. See, e.g., April 29, 1987, Letter to W.L. Jackson, AMAX Magnesium from Division of Oil, Gas and Mining, pg. 3 ("Final reclamation requirements for the dike will be

Tony J. Rudman, Esq.
September 13, 2001
Page 4

determined in a final Reclamation Plan to be approved by both the Division and the BLM at the time of the project termination.”); publication in newspapers of the “Notice of Tentative Approval,” no. M/045/022, *In The Matter of Tentative approval of the Mining and Reclamation Plan Permit Application Submitted by AMAX Magnesium Corporation Tooele County, Utah*, dated May 1, 1987 (“Exterior dikes will be reclaimed in a manner consistent with the approved postmining land determined by the Division and the Bureau of Land Management upon termination of mining activities.”); *Variance Request*, dated April 29, 1987 (“It is recognized that additional reclamation of the dikes may be required by the BLM and DOGM at project completion. The inner dikes, however, will be graded down to conform to the natural salt deposition contours.”). As described above, the terms of Magcorp’s Permit, its Reclamation Contract, and its Reclamation Plan all clearly indicate they will be reevaluated and revised periodically to reflect changed conditions.

Although the Division and Magcorp may, or may not, agree on the Division’s authority to require revision to previously filed Reclamation Plans, Magcorp does not dispute “that the parameters of reclamation for the Knolls Solar Ponds were established in 1987, before the outset of the project.” See, May 11, 2001 letter from Tony J. Rudman, Counsel for Magcorp, to M.A. Wright, DOGM, pg. 1. Therefore, at a minimum, Magcorp has agreed that it is bound by the 1987 “parameters.” The 1987 “parameters” expressly defer determining some of the specifics of the Reclamation Plan until a later date, and expressly states that the Division, with input from the BLM, will make that determination. Those 1987 parameters include revising the amount of the surety to reflect changed conditions. Supra.

The Division Accepts Public Comments, Including Those of the BLM

In your letter, Magcorp expresses concern that the U.S. Bureau of Land Management has provided comments to the Division on the revised Reclamation Plan. The Division, as a public state agency, is normally bound to accept comments from the public and all interested parties regarding this and other matters. See, e.g., United States Constitution amend. I “All men have the inherent and inalienable right . . . to assemble peaceably and protect against wrongs, and to petition the government for redress of grievances.”; See also, Utah Constitution art. I, para. 1. Therefore, the Division cannot agree with your client’s position that the Division must refuse to accept comments from the BLM on this matter. Of course, accepting comments does not mean the Division is bound to incorporate those comments into the revised Plan. However, the Division can and does accept comments made to it by the public, including the BLM, and considers those comments in its decision-making process.

Similar to above, it is unnecessary for the Division and Magcorp to agree whether the Division must refuse public comments on this matter. In order to receive its Permit to

000835

conduct mining operations, Magcorp expressly agreed to the terms and conditions therein. Those terms and conditions expressly state that the landowner, the United States Bureau of Land Management, will have the ability to submit comments regarding the final Reclamation Plan, at least in some respects. See above-cited documents.

For the above reasons the Division will consider the BLM's comments in deciding whether to require revision to Magcorp's Permit. Similarly, the Division will consider the numerous comments made by Magcorp over the course of the last year on this matter in reaching its conclusions.

Conclusion

As described above, not only does the Division have the legal authority to require revision to Magcorp's Reclamation Plan and surety amount, but Magcorp has expressly agreed its permit, plan and surety may be revised periodically by DOGM to reflect changed conditions. In fact, the surety amount has already been revised once to reflect changed conditions at the Knolls facility. See Reclamation Estimate, Magnesium Corporation of America, Knolls Project, Tooele County, dated May 31, 1990. DOGM is under a legislative mandate to revise reclamation plans and sureties as needed to satisfy the Utah Mined Land Reclamation Act's requirement that all mining operations are fully bonded at all times, i.e., fully bonded in the event the operator is unable or unwilling to perform the necessary reclamation at any point in time that the NOI will be in effect. See e.g., Utah Code, 40-8-13 and 40-8-14.

The Division thanks Magcorp for its written and verbal input regarding the revised Reclamation Plan and amount of surety for the Knolls facility, and the Division will take them into consideration as part of its evaluation of this matter. This process has been very long, but the Division has wanted to make sure that all parties, including Magcorp, have been provided ample opportunity to prepare their comments and to meet with the Division to present their concerns. The Division anticipates reaching a final decision whether to require revision to Magcorp's Plan, and whether to revise the amount of Magcorp's surety, in the near future.

Tony J. Rudman, Esq.
September 13, 2001
Page 6

If you have any questions, comments or concerns, please contact me at 801-366-0508.

Very truly yours,



Kurt E. Seel
Assistant Attorney General

se

cc: Lowell Braxton, DOGM
Mary Ann Wright, DOGM
Wayne Hedberg, DOGM

000837